

STATE OF MICHIGAN
COURT OF APPEALS

ABBEY PIZZO,

Plaintiff- Appellant,

v

ANTRIM DEVELOPMENT CORPORATION,
McCONNELL CONSULTING, INC.,
T.E. HAINES and CH&P DRILLING COMPANY,

Defendants- Appellees.

UNPUBLISHED

June 20, 1997

No. 192639

Otsego Circuit Court

LC No. 95-6196 NI

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM.

Plaintiff was injured while visiting a friend, Larry Greca. Defendants operate an oil pump on Greca's land. The pump is in continuous operation 24 hours a day.

During her visit to Greca, plaintiff was highly intoxicated. She went for a walk in this condition on Greca's property, and was later found badly injured near the oil pump. The pump itself is not readily accessible to casual passersby, being guarded by a large metal grate. Plaintiff, however, claims that the spaces in the grate are sufficiently large that a person's head can pass through the grate and thereby be exposed to the pump mechanism. Plaintiff theorizes that, although she remembers nothing of how she was injured, such was the mechanism of the harm that befell her.

Defendants sought and were granted summary disposition under MCR 2.116(C)(10). On this appeal of right, plaintiff contends the trial court erred in finding that she had produced insufficient circumstantial evidence to create a triable issue of fact as to whether she was injured by contacting some part of the oil pump. This case is being decided without oral argument pursuant to MCR 7.214(E).

Whether or not plaintiff was injured by coming into contact with the oil pump, there is on this record no evidence whatsoever of any negligence on the part of defendants. Rather, the oil pump was an open and obvious danger to any mentally competent adult, particularly in the absence of any claim by plaintiff that defendants, or any of them, knew of her intoxicated condition and proximity to the pump immediately prior to injury. Defendants had no reason to anticipate that plaintiff would voluntarily

expose herself to any such harm despite her knowledge of the obvious hazard. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610; 537 NW2d 185 (1995), quoting 2 Restatement of Torts 2d, §343A(1). Assuming *arguendo* that the trial court erred in finding the circumstantial evidence insufficient to create a triable issue of fact as to whether plaintiff's injury was caused by contact with the oil pump, in the absence of evidence of negligence on the part of defendants summary disposition was nonetheless properly granted. *Williams v Lakeland Convalescent Center*, 4 Mich App 477, 483; 145 NW2d 272 (1966).

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Joel P. Hoekstra